

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

AUDRA MCCOWAN, et al.,

Plaintiffs,

v.

CITY OF PHILADELPHIA, et al.,

Defendants.

CIVIL ACTION

NO. 19-3326-KSM

ORDER

AND NOW, this 11th day of January, 2021, upon consideration of Defendant Curtis Younger's Partial Motion to Dismiss (Doc. No. 53), Plaintiffs' response brief (Doc. No. 61), Younger's reply brief (Doc. No. 64), the City Defendants' Partial Motion to Dismiss (Doc. No. 54), Plaintiffs' response brief (Doc. No. 60), the City Defendants' reply brief (Doc. No. 66), Defendant Richard Ross Jr.'s Motion to Dismiss (Doc. No. 55), and Plaintiffs' response brief (Doc. No. 59), it is **ORDERED** that the motions are **GRANTED IN PART** and **DENIED IN PART** as follows:

1. The following claims are dismissed with prejudice:

- McCowan's claims against Gibbons;
- Allen's claims against Ross;
- Plaintiffs' IIED claims (Count XV) against the City;
- Plaintiffs' stand-alone claims for declaratory relief (Count XXIII) and injunctive relief (Count XXIV) against Ross and Younger.

2. The following claims are dismissed without prejudice:

- McCowan's § 1981 claims (Counts VIII, IX, and X) against Ross;

- Plaintiffs' § 1983 disparate treatment claims (Count XI) against Ross, the City, and the individual City Defendants in their official capacity;
- Plaintiffs' PHRA and PFPO claims for retaliation and aiding and abetting (Counts XVIII, XIX, XXI, and XXII) against Younger.

3. Otherwise, the motions to dismiss (Doc. Nos. 53–55) are **DENIED**.

4. If Plaintiffs can resolve the issues addressed in the accompanying Memorandum, they may file a third amended complaint as to the claims that the Court has dismissed without prejudice.¹ If Plaintiffs choose to file a third amended complaint, they should add a § 1983 citation to Counts VIII, IX, and X as those claims relate to the City. The third amended complaint, if any, is due within **fourteen days** of the date of this Order.

5. Defendants shall file their answers within **twenty-one days** of Plaintiffs filing a third amended complaint or informing the Court and opposing counsel that they do not intend to file a third amended complaint.

IT IS SO ORDERED.

/s/**Karen Spencer Marston**

KAREN SPENCER MARSTON, J.

¹ As stated in Judge Marston's Policies and Procedures, the third amended complaint "must include a redline showing the changes made to the original pleading."